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EXAMINER
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LOUIE, OSCAR A

ART UNIT	PAPER NUMBER
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2436

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11/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/790,466	<b>Applicant(s)</b> DULAC, STEPHEN P.	
	<b>Examiner</b> OSCAR A. LOUIE	<b>Art Unit</b> 2436	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08/18/2008</u>  | 6) <input type="checkbox"/> Other: _____                          |

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## **DETAILED ACTION**

This final action is in response to the amendment filed on 08/18/2008. Claims 1-19 pending and have been considered as follows.

### ***Examiner Note***

In light of the applicant's amendments the examiner hereby withdraws his previous Claim Objections with respect to Claims 5 & 13.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szymanski (US-6148081-A) in view of Liao et al ("The Split and Merge Protocol for Interactive Video-on-Demand") and in further view of Spies (US-6055314-A).

Claim 1:

Szymanski discloses a method of providing a video program in response to a demand by a subscriber comprising,

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- “delivering a first unencrypted portion of at least one video program available for viewing on demand,” (i.e. “The interactive television signal includes an interactive portion consisting of application code or control information, as well as an audio-video portion consisting of a television program”) [Szymanski column 1 lines 32-35];
- “storing the first unencrypted portion of the at least one video program as unencrypted data on a Digital Video Recorder (DVR),” (i.e. “The set-top box receives the signal transmitted by the broadcast service provider, separates the interactive portion from the audio-video portion and decompresses the respective portions of the signal”) [Szymanski column 1 lines 43-47];
- “offering the video program for purchase by the subscriber,” (i.e. “the carousel may comprise an electronic commerce application which allows interactive television users to make purchases via credit card transactions”) [Szymanski column 9 lines 10-13];
- “accepting a subscriber demand to purchase the complete video program,” (i.e. “The credential can be created by secure means so that it can be determined at run time whether the credential was in fact created by the producer of the credit card application (which may be referred to as the "grantor carousel")”) [Szymanski column 9 lines 26-30];

but Szymanski does not explicitly disclose,

- “retrieving the stored first unencrypted portion of the at least one video program after accepting a subscriber demand to purchase the complete video program,” although Liao et al. do suggest receiving video content at the set top box, as recited below;

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- “authorizing capture and decryption of a remaining portion of purchased video program,” although Liao et al. do suggest receiving video content at the set top box, as recited below;
- “switching from the stored first unencrypted portion of the at least one video program to the remaining portion of the purchased video program,” although Liao et al. do suggest splitting a user off from an original batch and assigning the user to a new video stream, as recited below;
- “authorizing capture and decryption of a remaining portion of purchased video program,” although Spies does suggest cryptographic keys controlling access to each video program, as recited below;

however, Liao et al. do disclose,

- “With VoD services, customers may select programs from massive, remote video archives, view them when they wish, and interact with the programs using VCR-like functions, such as fast forward and rewind” [Liao et al. page 51];
- “When a user in a batch initiates a user interaction, the protocol splits off the interactive user from the original batch and temporarily assigns that user to a new video stream” [Liao et al page 52];

whereas, Spies does disclose,

- “The video content provider 22 maintains a video program storage 30 which keeps the video content programs and a program keys database 32 which stores cryptographic program keys that correspond to associated video content programs. There is one program key for each video content program” [Spies column 5 lines 14-19];

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Therefore, it would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to include "retrieving the stored first unencrypted portion of the at least one video program after accepting a subscriber demand to purchase the complete video program" and "switching from the stored first unencrypted portion of the at least one video program to the remaining portion of the purchased video program" in the invention as disclosed above by Szymanski for the purposes of securely accessing the program content that the subscriber requested and purchased and being able to play the program content as requested by a subscriber.

Claim 2:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 1 above, further comprising,

- "delivering a portion of at least one video program on a hidden channel" (i.e. "In addition to the broadcast channel between the broadcast station and receiving station, there may be other channels, such as a modem channel (which may also be referred to as an http, or hypertext transfer protocol, channel") [Szymanski column 5 lines 43-47].

Claim 3:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 1 above, but Szymanski and Spies do not explicitly disclose,

- "the remaining portion containing less than all of the program and including at least the portion not stored in the first portion," although Liao et al. do suggest video program batching, as recited below;

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however, Liao et al. do disclose,

- “Batching can reduce the per-user video delivery cost. (Batching here does not necessarily mean waiting a certain amount of time before serving user requests—it simply means resource sharing)” [Liao et al page 51];

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the applicant’s invention to include “the remaining portion containing less than all of the program and including at least the portion not stored in the first portion” in the invention as disclosed above by Szymanski and Spies since it would have been obvious for the remaining portion of any split portion to be less than the whole of two split portions together and not be a part of the first portion since the remaining portion is not the first portion.

Claim 4:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 1 above, but Szymanski and Spies do not explicitly disclose,

- “switching to the remaining portion at one of a plurality of predetermined transition points,” although Liao et al. do suggest split and merge operations, as recited below;

however, Liao et al. do disclose,

- “Split and Merge (SAM) refers to the split and merge operations incurred when each user performs user interactions.”) [Liao et al. page 51];

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Therefore, it would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to include "switching to the remaining portion at one of a plurality of predetermined transition points" in the invention as disclosed above by Szymanski and Spies for the purposes of providing non-interrupted program interaction.

Claim 5:

Szymanski discloses a method for purchasing a program on demand comprising,

- "sending a first unencrypted portion of the program for purchase to a subscriber's digital video recorder," (i.e. "The interactive television signal includes an interactive portion consisting of application code or control information, as well as an audio-video portion consisting of a television program") [Szymanski column 1 lines 32-35];
- "storing the first unencrypted portion of the at least one program for purchase on the subscriber's digital video recorder," (i.e. "The set-top box receives the signal transmitted by the broadcast service provider, separates the interactive portion from the audio-video portion and decompresses the respective portions of the signal") [Szymanski column 1 lines 43-47];
- "offering at least one program for purchase," (i.e. "the carousel may comprise an electronic commerce application which allows interactive television users to make purchases via credit card transactions") [Szymanski column 9 lines 10-13];
- "selecting the at least one program for purchase," (i.e. "The credential can be created by secure means so that it can be determined at run time whether the credential was in fact created by the producer of the credit card application (which may be referred to as the "grantor carousel")") [Szymanski column 9 lines 26-30];



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- “splicing the first unencrypted portion of the selected program with the remaining portion of the selected video to form a complete program” (i.e. “Set-top box 22 processes the packetized signal to reconstruct the television programs and interactive applications embodied in the signal. The reconstructed applications are executed in the set-top box, while the reconstructed television programs are passed to the television, where they are displayed”) [Szymanski column 5 lines 35-40];
- “storing the complete program on the digital video recorder for a predetermined period of time” (i.e. “The set-top box then reconstructs the modules from the corresponding packets and reconstructs the television programs from the packets containing the associated audio and video data. As explained above, the modules are stored in RAM 37, where they are available for use by applications executing in the control unit 35”) [Szymanski column 8 lines 35-40];

but Szymanski does not explicitly disclose,

- “retrieving the stored first unencrypted portion of the selected at least one program for purchase for viewing by the subscriber,” although Liao et al do suggest a customer requesting programs through a VoD service, as recited below;
- “sending at least the remaining portion of the selected at least one program to the digital video recorder,” although Liao et al do suggest video program batching, as recited below;
- “authorizing storage and viewing by the subscriber of the selected at least one program,” although Spies does suggest usage of an IC card for authentication, as recited below;

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however, Liao et al. do disclose,

- “With VoD services, customers may select programs from massive, remote video archives, view them when they wish, and interact with the programs using VCR-like functions, such as fast forward and rewind” [Liao et al. page 51];
- “When a user in a batch initiates a user interaction, the protocol splits off the interactive user from the original batch and temporarily assigns that user to a new video stream” [Liao et al. page 52];

whereas, Spies does disclose,

- “For example, the purchaser 26 might insert the IC card 50 into the purchaser's own computing unit (not shown in this figure) resident at his own home which is interconnected to the video merchant computing unit 44 via a distribution network” [Spies column 6 lines 35-39];

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include, “retrieving the stored first unencrypted portion of the selected at least one program for purchase for viewing by the subscriber” and “sending at least the remaining portion of the selected at least one program to the digital video recorder” and “authorizing storage and viewing by the subscriber of the selected at least one program” in the invention as disclosed above by Szymanski for the purposes of providing access to the program content and security to permit access to the content that they requested and purchased legitimately.

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Claim 6:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 5 above, further comprising,

- “sending the first unencrypted portion of a program for purchase over a channel that is hidden to the subscriber but recognized by the digital video recorder” (i.e. “In addition to the broadcast channel between the broadcast station and receiving station, there may be other channels, such as a modem channel (which may also be referred to as an http, or hypertext transfer protocol, channel”) [Szymanski column 5 lines 43-47].

Claim 7:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 6 above, but Szymanski and Liao et al. do not explicitly disclose,

- “sending information about the program in addition to the first unencrypted-portion,” although Spies does suggest sending program information, as recited below;

however, Spies does disclose,

- “Upon selection, the STB 230 sends a request for information on the selected programs. The headend server 208 retrieves the information from program information database 216 and transmits the information over the network 206 to the requesting STB 230” [Spies column 15 lines 32-36];

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include "sending information about the program in addition to the first unencrypted-portion" in the invention as disclosed above by Szymanski and Liao et al. for the purposes of providing program content information prior to a request and purchase of the entire content.

Claim 8:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 7 above, but Szymanski and Liao et al. do not explicitly disclose,

- "promotional video, additional description about the program and program reviews," although Spies does suggest program information details, as recited below;

however, Spies does disclose,

- "The program information might include title, cast, director, rating, brief description, whether it is available in closed caption or another language, price, and so on. The subscriber can review the information, request additional information on the programs or information on different programs, order a program, or exit the VOD application" [Spies column 15 lines 37-42];

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include "promotional video, additional description about the program and program reviews" in the invention as disclosed above by Szymanski and Liao et al. for the purposes of providing detailed program content information prior to a request and purchase of the entire content.

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Claim 9:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 8 above, but Szymanski and Liao et al. do not explicitly disclose,

- “offering a free preview of a program from the stored first unencrypted portion of the at least one program,” although Spies does suggest additional program information details, as recited below;

however, Spies does disclose,

- “The program information might include title, cast, director, rating, brief description, whether it is available in closed caption or another language, price, and so on. The subscriber can review the information, request additional information on the programs or information on different programs, order a program, or exit the VOD application” [Spies column 15 lines 37-42];

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant’s invention to include “offering a free preview of a program from the stored first unencrypted portion of the at least one program” in the invention as disclosed above by Szymanski and Liao et al. for the purposes of providing detailed program content information prior to a request and purchase of the entire content.

Claim 10:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 6 above, but Szymanski and Spies do not explicitly disclose,

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- “delivering the inserted triggers with the program,” although Liao et al. do suggest split and merge, as recited below;
- “identifying the inserted triggers at the digital video recorder for switching from the stored first unencrypted portion of the program to the remaining portion of the program,” although Liao et al. do suggest split and merge, as recited below;

however, Liao et al. do disclose,

- “Split and Merge (SAM)” [Liao et al. page 52];

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant’s invention to include “delivering the inserted triggers with the program,” and “identifying the inserted triggers at the digital video recorder for switching from the stored first unencrypted portion of the program to the remaining portion of the program” in the invention as disclosed above by Szymanski and Spies since it is suggested that the set-top box would require the delivery and identification of some form of instructions or “triggers” to perform specific functions (i.e. “Split and Merge”) [Liao et al. page 52].

Claim 11:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 10 above, but Szymanski and Spies do not explicitly disclose,

- “the triggers are delivered with the video,” although Liao et al. do suggest split and merge, as recited below;

however, Liao et al. do disclose,

- “Split and Merge (SAM)” [Liao et al. page 52].

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include "the triggers are delivered with the video" in the invention as disclosed above by Szymanski and Spies since it is suggested that the set-top box would require the delivery of some form of instructions or "triggers" to perform specific functions (i.e. "Split and Merge") [Liao et al. page 52].

Claim 12:

Szymanski, Spies, and Liao et al. disclose a method of providing a video program in response to a demand by a subscriber, as in Claim 10 above, but Szymanski and Spies do not explicitly disclose,

- "triggers are included with a service's metadata," although Liao et al. do suggest split and merge, as recited below;

however, Liao et al. do disclose,

- "Split and Merge (SAM)" [Liao et al. page 52];

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention to include "triggers are included with a service's metadata" in the invention as disclosed above by Szymanski and Spies since it is suggested that the set-top box would require there to be some form of instructions or "triggers" included in the service's metadata in order to perform specific functions (i.e. "Split and Merge") [Liao et al. page 52].

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3. Claims 13 & 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szymanski (US-6148081-A) in view of Liao et al. (“The Split and Merge Protocol for Interactive Video-on-Demand”) in further view of Ma et al. (“Multicast Video on Demand Services”).

Claim 13:

Szymanski discloses an apparatus for providing a program in response to a subscriber demand comprising,

- “a digital video recorder being an integrated receiver/decoder having digital video recording capabilities” (i.e. “modularity may include conserving the limited amount of memory in a set-top box which can be used for interactive applications, reducing the time required to download applications from a broadcast station to a set-top box or reducing the amount of application code which must be written by allowing modules to be shared”) [Szymanski column 2 lines 11-17].
- “a first unencrypted portion of at least one program stored on the digital video recorder” (i.e. “The set-top box receives the signal transmitted by the broadcast service provider, separates the interactive portion from the audio-video portion and decompresses the respective portions of the signal”) [Szymanski column 1 lines 43-47].
- “an offer to purchase at least one program” (i.e. “the carousel may comprise an electronic commerce application which allows interactive television users to make purchases via credit card transactions”) [Szymanski column 9 lines 10-13].



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- “means for accepting the offer to purchase the at least one program” (i.e. “The credential can be created by secure means so that it can be determined at run time whether the credential was in fact created by the producer of the credit card application (which may be referred to as the "grantor carousel")”) [Szymanski column 9 lines 26-30].
- “means for splicing the first unencrypted portion of the at least one program with the remaining portion of the program to define a complete program” (i.e. “Set-top box 22 processes the packetized signal to reconstruct the television programs and interactive applications embodied in the signal. The reconstructed applications are executed in the set-top box, while the reconstructed television programs are passed to the television, where they are displayed. The interactive applications may generate graphics or audio which are combined with the television program prior to being displayed”) [Szymanski column 5 lines 35-42].

but Szymanski does not explicitly disclose,

- “means for retrieving the first unencrypted portion from storage while retrieving the remaining portion of the program on the digital video recorder,” although Liao et al. does suggest VoD, as recited below;
- “the complete program stored on the digital video recorder,” although Liao et al. does suggest VoD, as recited below;
- “the complete program stored on the digital video recorder,” although Ma et al. does suggest a set top box that receives video content, as recited below;

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however, Liao et al. does disclose,

- “With VoD services, customers may select programs from massive, remote video archives, view them when they wish, and interact with the programs using VCR-like functions, such as fast forward and rewind” [Liao et al. page 51];

whereas, Ma et al. does disclose,

- “The client's STB, from software perspectives, generally contains a main control thread, video stream receiver threads and a video player thread” [Ma et al. page 37 column 2 lines 5-7];

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the applicant's invention to include “the complete program stored on the digital video recorder” in the invention as disclosed above by Szymanski for the purposes of having a storage location to obtain the requested program content from.

Claim 16:

Szymanski, Liao et al., and Ma et al. disclose an apparatus for providing a program in response to a subscriber demand, as in Claim 13 above, but Szymanski and Ma et al. do not explicitly disclose,

- “triggers inserted into the remaining portion at predetermined transition points for identification by the digital video recorder as a point of transition between the first unencrypted portion and the remaining portion,” although Liao et al. do suggest split and merge, as recited below;

however, Liao et al. do disclose,

- “Split and Merge (SAM)” [Liao et al. page 2];

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Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant's invention would have found it to be obvious to include "triggers inserted into the remaining portion at predetermined transition points for identification by the digital video recorder as a point of transition between the first unencrypted portion and the remaining portion" in the invention as disclosed above by Szymanski and Ma et al. since it is suggested that the set-top box would require there to be some form of instructions or "triggers" included in the service's metadata in order to perform specific functions (i.e. "Split and Merge") [Liao et al. page 52].

4. Claims 14 & 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szymanski (US-6148081-A) in view of Liao et al. ("The Split and Merge Protocol for Interactive Video-on-Demand") in further view of Ma et al. ("Multicast Video on Demand Services") and in further view of Spies (US-6055314-A).

Claim 14:

Szymanski, Liao et al., and Ma et al. disclose an apparatus for providing a program in response to a subscriber demand, as in Claim 13 above, but their combination do not explicitly disclose,

- "a program guide stored on the at least one digital video recorder," although Spies does suggest VOD application, as recited below;

however, Spies does disclose,

- "Each STB 230 is configured to run a video-on-demand (VOD) application (step 304).

As noted above, VOD is like having a virtual video store in the subscriber's home. The

VOD application presents a user interface which permits the subscriber to browse a wide

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selection of programs (movies, video games, TV shows, educational features, etc.) and rent the program they want to see immediately from their own TV sets”) [Spies column 15 lines 16-23];

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the applicant’s invention to include “a program guide stored on the at least one digital video recorder” in the invention as disclosed above by Szymanski, Liao et al., and Ma et al. for the purposes of alleviating the need to store and access everything remotely, as well as, provide quicker menu access for the subscriber.

Claim 15:

Szymanski, Spies, Liao et al., and Ma et al. disclose an apparatus for providing a program in response to a subscriber demand, as in Claim 14 above, their combination further comprising,

- “a channel hidden from the program guide but known by the digital video recorder for sending the first unencrypted portion to the digital video recorder for storage thereon” (i.e. “In addition to the broadcast channel between the broadcast station and receiving station, there may be other channels, such as a modem channel (which may also be referred to as an http, or hypertext transfer protocol, channel”) [Szymanski column 5 lines 43-47].

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5. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Szymanski (US-6148081-A) in view of Liao et al. (“The Split and Merge Protocol for Interactive Video-on-Demand”) in further view of Ma et al. (“Multicast Video on Demand Services”) and in further view of Ullrich et al. (US-5583937-A).

Claim 17:

Szymanski, Liao et al., and Ma et al. disclose an apparatus for providing a program in response to a subscriber demand, as in Claim 13 above, but their combination do not explicitly disclose,

- “wherein the at least a portion of the program is repeatedly transmitted on one of a plurality of channels, each repeated transmission separated from a previous transmission by a predetermined period of time,” although Ullrich et al. do suggest simultaneously broadcast and staggered channels, as recited below;

however, Ullrich et al. do disclose,

- “In order to provide near video on demand (NVOD) services, the a single program or performance, labeled as program X in FIG. 3, is exhibited simultaneously on each of channels 7073. While each exhibition is simultaneously broadcast on transmission system 13, the exhibitions are offset or staggered in time relative to one another” [column 7 lines 64-67 & column 8 lines 1-2];

Therefore, it would have been obvious for one of ordinary skill in the art at the time of the applicant’s invention to include, “wherein the at least a portion of the program is repeatedly transmitted on one of a plurality of channels, each repeated transmission separated from a previous transmission by a predetermined period of time,” in the invention as disclosed by Szymanski, Liao et al., and Ma et al. for the purposes of the exhibition of different programming.

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Claim 18:

Szymanski, Liao et al., and Ma et al. disclose an apparatus for providing a program in response to a subscriber demand, as in Claim 17 above, but their combination do not explicitly disclose,

- “wherein the at least a portion of the program consists of the remaining portion of the program,” although Ullrich et al. do suggest staggered channels of programs, as recited below;

however, Ullrich et al. do disclose,

- “In the example depicted in FIG. 3, program X has a run length of around 110 minutes and a repeat factor of 120 minutes. Thus, on each of channels 70-73, program X is exhibited for 110 minutes. When program X finishes, promotional programming is exhibited for 10 minutes” [column 8 lines 3-7];

Therefore, it would have been obvious for one of ordinary skill in the art at the time of the applicant’s invention to include, “wherein the at least a portion of the program consists of the remaining portion of the program,” in the invention as disclosed by Szymanski, Liao et al., and Ma et al. for the purposes of repeating program X every 120 minutes continues indefinitely, until overall exhibition plans call for the exhibition of different programming.

Claim 19:

Szymanski, Liao et al., and Ma et al. disclose an apparatus for providing a program in response to a subscriber demand, as in Claim 17 above, but their combination do not explicitly disclose,

- “wherein the at least a portion of the program comprises the entire program,” although Ullrich et al. do suggest staggered channels of programs, as recited below;

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however, Ullrich et al. do disclose,

- “In the example depicted in FIG. 3, program X has a run length of around 110 minutes and a repeat factor of 120 minutes. Thus, on each of channels 70-73, program X is exhibited for 110 minutes. When program X finishes, promotional programming is exhibited for 10 minutes” [column 8 lines 3-7];

Therefore, it would have been obvious for one of ordinary skill in the art at the time of the applicant’s invention to include, “wherein the at least a portion of the program comprises the entire program,” in the invention as disclosed by Szymanski, Liao et al., and Ma et al. for the purposes of repeating program X every 120 minutes continues indefinitely, until overall exhibition plans call for the exhibition of different programming.

### ***Response to Arguments***

6. Applicant's arguments filed 08/18/2008 have been fully considered but they are not persuasive at this point in time.

- The applicant’s arguments on pages 9-10 with respect to, “Szymanski Does Not Disclose the Step of "Delivering. a First Unencrypted Portion of at Least One Video Program Available for Viewing On Demand",” have been carefully considered but are non-persuasive at this point in time;
  - o For further clarification, “video on demand,” is indeed a form of “interactive television” and although generally a genus may not be construed as the same as or as being sufficient to be compared to a species, in this case the examiner believes that because by definition “interaction television” refers to any form of interactive

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service involving video/audio, thus it would be reasonable to expect one of ordinary skill in the art to understand that “interactive video” typically refers to “video on demand” or some derivative thereof, since the two terms are commonly used in conjunction (i.e. interactive video on demand) and appear to be interchangeable; that is, in this case, the genus (i.e. “interactive television”) is obvious enough to one of ordinary skill in the art to include the species (i.e. “video on demand”) -- the same applies to “set top box” and “DVR”; in addition, Szymanski does at the very least suggest that the purchases include video since the entire invention deals with “interactive television” which is video and audio; it is reasonable to interpret Szymanski as suggesting audio/video content to be available as a purchase since no limits are set as to what may or may not be purchased through the “interactive television” and seeing as this is an audio/video system, one of ordinary skill in the art would not be unreasonably expected to envision such content as an obvious option;

- The applicant’s argument on page 11 with respect to, “Szymanski Does Not Disclose the Step, of Storing, the First Unencrypted Portion of the at Least One Video Program as Unencrypted Data on a Distal Video Recorder (VCR),” has been carefully considered but is non-persuasive at this point in time;
  - o The examiner notes that besides the storage unencrypted video program not appearing to be the main novelty of the applicant's invention, it is reasonable to expect storage of content in a content reception device whether temporarily for varying durations or permanently; despite the differences in the terminology



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between the prior art and the applicant's claims, the examiner believes that at the very least the two apparatuses (namely the set top box and the DVR) function and act in a similar manner; both have memory to store content for some duration of time and perform handling of content for viewing/displaying; it is also reasonable to expect one of ordinary skill in the art to understand that "set top boxes" and "DVR's" are either the same or an obvious variant based on the functionality;

- The applicant's arguments on pages 11 & 12 with respect to, "Szymanski Does Not Disclose the Step of "Offering the Video Program for Purchase by the Subscriber"" and "Szymanski Does not Disclose the Step of "Accepting a Subscriber Demand to Purchase the Complete Video Program," have been carefully considered but are non-persuasive at this point in time;
  - o The examiner notes that as mentioned above, Szymanski does at the very least suggest that the purchases include video since the entire invention deals with "interactive television" which is video and audio; it is reasonable to interpret Szymanski as suggesting audio/video content to be available as a purchase since no limits are set as to what may or may not be purchased through the "interactive television" and seeing as this is an audio/video system, one of ordinary skill in the art would not be unreasonably expected to envision such content as an obvious option;

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- The applicant's argument on page 13 with respect to, "Liao Does not Disclose "Retrieving the Stored First Unencrypted Portion of the at Least One Video Program After Accepting a Subscriber Demand to Purchase the Complete Video Program", " has been carefully considered but is non-persuasive at this point in time;
  - o The examiner notes that as currently written, the current claim language is broad enough to include retrieval from any location and does not have clarification for at which point and from where is the video program retrieved from; that is, is the video program retrieval after the same program is stored in the DVR or is the retrieval the initial retrieval from a remote location; also note that from a different angle, "interactions with programs using VCR-like functions" does suggest storage and user control of retrieval of programs much like a VCR would function;
- The applicant's argument on page 13 with respect to, "Liao Does Not Disclose "Switching: from the Stored Unencrypted Portion of the at Least One Video Program to the Remainin9 Portion of the Purchased Video Program", " has been carefully considered but is non-persuasive at this point in time;
  - o The examiner notes that the current claim language does not appear to provide for playing the program locally clarifying the "batching" details; that is, the current claim language only recites switching from a stored first portion to a remaining portion;

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- The applicant's argument on page 13 with respect to, "Spies does not Disclose "Authorizing Capture and Decryption of a remaining Portion of the Video Program"," has been carefully considered but is non-persuasive at this point in time;
  - o The examiner notes that the issues with respect to the storage are addressed above; regarding the claim limitation "authorizing capture and decryption of a remaining portion of purchased video program" it appears to only claim authorization of the capturing and decryption of a program which Spies provides suggestion for through the use of cryptographic keys;
- For clarification, the examiner notes that the intention was not to take the stance of inherency for the purchasing but that it is reasonable to expect one of ordinary skill in the art to find it obvious given the prior art of record; the only inherency that may have been taken is the storage of the video program, since it is reasonable to expect that video programs whether in whole or in part must be stored at some point for processing regardless whether it is temporary or permanent;
- In addition, the aspect of mere "storage" alone is not material which is patentable since it is well known in the art, however, the method by which the storage is used in combination with aspects which appear to not have been included clearly in the current claim language with respect to the authentication, retrieval, switching of program content, etc. could be; the examiner recommends that the applicant not focus too greatly on minor individual limitations (i.e. whether or not the prior art suggests or discloses storage) to overcome the prior art but to focus more on ensuring their claims include the material which they believe is novel/new and should be patentable over the prior art;

***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- a. Arsenault et al. (US-6701528-B1) - VVOD & multiple encrypted video segments;
- b. Ebisawa (US-6263504-B1) - video on demand storage;
- c. Artigalas et al. (US-6091883-A) - video on demand storage;

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Oscar Louie whose telephone number is 571-270-1684. The examiner can normally be reached Monday through Thursday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Moazzami, can be reached at 571-272-4195. The fax phone number for Formal or Official faxes to Technology Center 2100 is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OAL  
11/12/2008

/Nasser G Moazzami/

Supervisory Patent Examiner, Art Unit 2436